

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

DIOSDADO DELEON,

Plaintiff,

v.

**GENERAL MOTORS, LLC and DOES
1 through 10, inclusive,**

Defendant.

Case No.: SACV 23-01590-CJC (DFMx)

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND [Dkt. 20] AND
GRANTING DEFENDANT'S MOTION
TO DISMISS [Dkt. 11] WITH LEAVE
TO AMEND**

I. INTRODUCTION & BACKGROUND

Plaintiff Diosdado Deleon filed this case in state court alleging that Defendant General Motors, LLC (“GM”) failed to disclose a risk of battery fire with a Chevrolet Bolt he purchased in July 2020. (Dkt. 1-1 [Complaint, hereinafter “Compl.”] ¶¶ 7, 9.) Specifically, Plaintiff alleges that GM “falsely represented that the subject vehicle is safe and functional for normal use . . . because the batteries may ignite when they are either fully charged or fall below seventy (70) miles remaining mileage” and “[t]he vehicle also cannot be parked inside overnight due to fire risk.” (*Id.* ¶ 16.) GM issued a recall notice

1 for the vehicle in 2021. (*Id.* ¶¶ 18, 27.) Based on these facts, Plaintiff asserts claims
 2 under the Song-Beverly Act alongside claims for fraud and fraudulent business practices
 3 under California’s Unfair Competition Law. (*Id.* ¶¶ 35–120.) GM removed the case,
 4 invoking diversity jurisdiction. (Dkt. 1 [hereinafter “NOR”].) Now before the Court are
 5 Plaintiff’s motion to remand, (Dkt. 20), and GM’s motion to dismiss Plaintiff’s fraud
 6 claims, (Dkt. 11). For the following reasons, Plaintiff’s motion to remand is **DENIED**
 7 and GM’s motion to dismiss is **GRANTED WITH LEAVE TO AMEND**.¹

8 9 **II. MOTION TO REMAND**

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 11 “Federal courts are courts of limited jurisdiction,” possessing “only that power
 12 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013)
 13 (internal quotations omitted). A defendant may remove to federal district court a civil
 14 action brought in state court, but over which a federal court may exercise original
 15 jurisdiction. 28 U.S.C. § 1441(a). By statute, federal courts have diversity jurisdiction
 16 over suits with more than \$75,000 in controversy if the citizenship of each plaintiff is
 17 different from that of each defendant. 28 U.S.C. § 1332(a). The removal statute is
 18 strictly construed against removal jurisdiction, and “[f]ederal jurisdiction must be
 19 rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v.*
 20 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). If the court determines it lacks subject
 21 matter jurisdiction, the action shall be remanded to state court. 28 U.S.C. § 1447(c).

22
 23 The burden of establishing subject matter jurisdiction falls on the defendant. *See*
 24 *Gaus*, 980 F.2d at 566. A defendant’s notice of removal need include only “a plausible
 25 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*

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 27
 28 ¹ Having read and considered the papers the parties presented, the Court finds these matters appropriate
 for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
 for November 6, 2023, at 1:30 p.m. is hereby vacated and off calendar.

1 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553–54, (2014). But
2 when “the plaintiff contests, or the court questions, the defendant’s allegation” and
3 “both sides submit proof,” the defendant must prove the amount in controversy by a
4 preponderance of the evidence. *Id.* at 554.

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6 In his motion to remand, Plaintiff argues that GM cannot meet its burden to show
7 that the Court has jurisdiction. He does not argue that GM failed to timely remove, that
8 the parties are not completely diverse, or that there is not \$75,000 in controversy. Rather,
9 he contends only that GM has failed to submit sufficient evidence supporting these
10 jurisdictional prerequisites. (*See* Mot.; Dkt. 24 [Reply] at 2.) The Court disagrees.

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12 First, removal was timely. A defendant must remove a civil case within thirty days
13 of receiving the complaint. 28 U.S.C. § 1446(b)(1). The proof of service attached to
14 GM’s Notice of Removal shows it was served on August 8, 2023. (NOR, Ex. B at 7).
15 GM removed the case on August 23, 2023. Plaintiff does not argue that GM was served
16 on a different date, and indeed, Plaintiff himself filed the proof of service reflecting the
17 August 8, 2023 service date in state court. “There is no real dispute here that GM filed
18 the Notice of Removal within thirty days of service, and GM has submitted admissible
19 evidence showing that is so.” *Jimenez v. Gen. Motors, LLC*, 2023 WL 6795274, at *2–3
20 (C.D. Cal. Oct. 13, 2023) (denying motion to remand filed by same attorney on same
21 basis).

22
23 Second, the parties are diverse. Plaintiff alleges that he resides in Cerritos,
24 California, and GM submits Plaintiff’s sales agreement, which lists his Cerritos,
25 California address. (Compl. ¶ 1; Dkt. 23-2 [Declaration of Peter Strotz], Ex. A.) This is
26 sufficient to show Plaintiff’s California citizenship. *See Jimenez*, 2023 WL 6795274, at
27 *3 (explaining that “[c]ourts in this district have held a party may rely on an address
28 listed in a purchase agreement to meet its burden of establishing an individual’s

1 citizenship” and collecting cases). GM also submits a declaration from Timothy M.
 2 Kuhn, counsel for GM, stating that “GM is a Delaware limited liability company that has
 3 its principal place of business in the State of Michigan.” (Dkt. 23-3 [Declaration of
 4 Timothy M. Kuhn, hereinafter “Kuhn Decl.”] ¶ 4.) Mr. Kuhn further states that “GM is
 5 100% owned by General Motors Holdings LLC,” which is “a Delaware limited liability
 6 company with its principal place of business in Michigan,” and that “General Motors
 7 Holdings LLC is 100% owned by General Motors Company,” which “is a Delaware
 8 corporation that has its principal place of business in the state of Michigan.” (*Id.* ¶¶ 5–6).
 9 This is sufficient to show GM’s Delaware and Michigan citizenship.² *See Gruber v. Gen.*
 10 *Motors LLC*, 2023 WL 6457136, at *2 (C.D. Cal. Oct. 3, 2023) (denying motion to
 11 remand filed by same attorney on same grounds).

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 13 Third, there is more than \$75,000 in controversy. “[T]he amount in controversy
 14 includes damages (compensatory, punitive, or otherwise), the costs of complying with an
 15 injunction, and attorneys’ fees awarded under fee-shifting statutes or contract.” *Fritsch v.*
 16 *Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 793 (9th Cir. 2018). Plaintiff alleges that
 17 he “is entitled to replacement of the subject vehicle, or restitution of the amount actually
 18 paid or payable under the contract,” and that GM’s conduct was “willful, justifying an
 19 award of a Civil Penalty . . . in an amount not to exceed two . . . times Plaintiff’s actual
 20 damages.” (Compl. ¶¶ 37, 43). The sales agreement reflects that the total cash price of
 21 the vehicle was \$35,738. “Thus, the Song-Beverly Act claims alone place the amount in
 22 controversy above \$75,000.” *Gruber*, 2023 WL 6457136, at *2.

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 25
 26 ² Plaintiff objects to Mr. Kuhn’s statements regarding the citizenship of GM, General Motors Holdings
 27 LLC, and General Motors Company as lacking foundation and being conclusory. (Dkt. 25.) These
 28 objections are **OVERRULED**. Mr. Kuhn states that as counsel at GM, he “ha[s] been responsible for
 managing GM’s breach of warranty litigation in California since 2018.” (Kuhn Decl. ¶ 1.) And he
 states that the statements in his declaration are “based upon [his] personal knowledge, on matters of
 which [he is] informed, and documents [he has] reviewed.” (*Id.*)

1 III. MOTION TO DISMISS

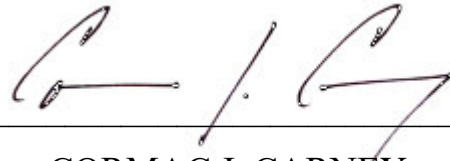
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3 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal
4 sufficiency of a plaintiff's claims. The issue on a motion to dismiss for failure to state a
5 claim is not whether the plaintiff will ultimately prevail but whether the plaintiff is
6 entitled to offer evidence to support the claims asserted. *Gilligan v. Jamco Dev. Corp.*,
7 108 F.3d 246, 249 (9th Cir. 1997). Rule 12(b)(6) is read in conjunction with Rule 8(a),
8 which requires only "a short and plain statement of the claim showing that the pleader is
9 entitled to relief." Fed. R. Civ. P. 8(a)(2). When evaluating a Rule 12(b)(6) motion, the
10 district court must accept all material allegations in the complaint as true and construe
11 them in the light most favorable to the non-moving party. *Skilstaf, Inc. v. CVS Caremark*
12 *Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012). To survive a motion to dismiss, a complaint
13 must contain sufficient factual material to "state a claim to relief that is plausible on its
14 face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Determining whether a
15 complaint states a plausible claim for relief is "a context-specific task that requires the
16 reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*,
17 556 U.S. 662, 679 (2009).

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19 GM moves to dismiss Plaintiff's fraud claims on the ground that "(a) Plaintiff
20 failed to plead fraud with particularity, (b) Plaintiff has not plausibly alleged GM's
21 knowledge of the alleged defect at or before the time of purchase, (c) GM's
22 advertisement of EPA estimates cannot form the basis for a misrepresentation claim, and
23 (d) Plaintiff's fraudulent concealment claims fail because they are barred by the
24 economic loss rule and Plaintiff cannot allege a transactional relationship with GM giving
25 rise to a duty to disclose." (Notice of Mot. at 2.) In response, Plaintiff "respectfully
26 requests leave to file a First Amended Complaint," stating that he can cure the asserted
27 defects. (Dkt. 14 [Opposition] at 5–6.) The Court will permit Plaintiff to do so.
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1 **IV. CONCLUSION**

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3 For the foregoing reasons, Plaintiff's motion to remand is **DENIED**. GM's motion
4 to dismiss Plaintiff's fraud claims is **GRANTED WITH LEAVE TO AMEND**. If
5 Plaintiff chooses to file an amended complaint, he must do so by **November 8, 2023**.
6 Failure to timely file an amended complaint will result in dismissal of Plaintiff's fraud
7 claims with prejudice. If Plaintiff chooses not to file an amended complaint, GM shall
8 file an answer to Plaintiff's Complaint by **November 22, 2023**.

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10 DATED: October 25, 2023

A handwritten signature in dark ink, appearing to read 'C. J. Carney', is written over a horizontal line.

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12 CORMAC J. CARNEY
13 UNITED STATES DISTRICT JUDGE
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